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JAMES H. McKENNEY,
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Brief of Brennan 26 for Appellee

SUPREME COURT OF THE UNITED STATES.

IN BANKRUPTCY.

Filed April 19, 1902.

OCTOBER TERM, 1901.

No. 302.

C. ELLIOTT & CO., ET AL., APPELLANTS.

vs.

FERDINAND TOEPPNER, APPELLEE.

CERTIFICATE FROM UNITED STATES CIRCUIT COURT OF APPEALS—SIXTH CIRCUIT.

BRIEF FOR APPELLEE.

MICHAEL BRENNAN,
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18,126.

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BRIEF FOR APPELLEE.

The Appellants filed a petition in the District Court of the United States for the Eastern District of Michigan, to have the Appellee adjudged a bankrupt. A jury being demanded by the Appellee, the case was tried before the Court and a jury, and was decided adversely to the Appellants. An appeal was then taken within ten days by the Appellants to the Circuit Court of Appeals, Sixth Circuit. No bill of exceptions was settled nor case made, nor was the record certified to other than by the Clerk of the Court in the

usual way. A motion was there made by the Appellee to dismiss the appeal and strike from the record the testimony appearing therein for the following reasons:

1. Because no case was made or settled by the Court so that the proceedings alleged to have been had and taken upon the trial of said cause in the Court below are not duly authenticated.

2. Because a review of the rulings below upon a jury trial in bankruptcy can only be had upon a bill of exceptions and a writ of error.

3. Because there is no such authenticated record before this Court and the proceedings had and taken upon the trial of said cause as will warrant the Court in reviewing the same on this appeal.

These are involved in the question certified to this Court. This question came up squarely in the Circuit Court of Appeals, Third Circuit, in the case of Duncan vs. Landis, 5 A. B. R., page 649. In that case a trial was had before a jury, exceptions taken and bill sealed, both as to admission of evidence and as to instructions to the jury. It was contended that although the only method by which a jury trial could be reviewed, if at all, was by writ of error, there was no statute authorizing the issuing of such writ in Bankruptcy Cases. After a full consideration of the subject, it was held, that the appellate jurisdiction given to Circuit Courts of Appeals by Section 24 is applicable to all "controversies arising in bankruptcy proceedings," and where the right to a trial by jury on the ground of insolvency exists under Section 19, it is according to the course of the common law, *and a review of the rulings in matters of law on such trial can only be had upon a writ of error, which is the proper remedy in such case.*

As the decision of the Court in that case is so full and complete and to the point, we content ourselves with the mere citation of same.

Respectfully submitted,

MICHAEL BRENNAN,
Attorney for Appellee.

ADOLPH SLOMAN,
Of Counsel.